

AUTOMOTIVE LEATHER SUBSIDIES UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF AUSTRALIA

The Government of the United States of America ("USG") and the Government of Australia ("GOA") (hereinafter referred to as the "Parties"), in order to reach a mutually satisfactory resolution of the issues presented in the Panel Report in *Australia – Subsidies Provided to Producers and Exporters of Automotive Leather* (WT/DS126), Recourse to Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") by the United States, January 21, 2000, *adopted* February 11, 2000 ("Panel Report"):

HAVE MUTUALLY DETERMINED AS FOLLOWS:

1 Repayment of Grant:

- 1.1 The recipient of the A\$30 million grant that was found to be a prohibited export subsidy by the WTO panel, Howe and Company Pty Ltd, ("Howe"), shall repay to the GOA A\$600,000 per year for 12 years.
- 1.2 The first repayment, in the amount of A\$300,000, is to be made to the GOA by August 1, 2000, the second payment, in the amount of A\$300,000, by February 1, 2001, and subsequent payments of A\$600,000 by February 1 of each year through to the final payment by February 1, 2012.
- 1.3 The GOA shall notify the USG of each payment within 30 days of its receipt, and shall provide an appropriate receipt or other proof of payment from the GOA agency receiving payment.
- 1.4 This repayment shall not be reimbursed to Australian Leather Holdings Limited. ("ALH") and any of its subsidiaries or to any "related entities" as defined in paragraph 2.3.3 below, either directly or indirectly, regardless of whether the reimbursement is specifically designated a reimbursement of the repayment. Any payments consistent with section 2 of this Understanding shall not be considered a reimbursement for the purpose of this paragraph.
- 1.5 The GOA will ensure that the \$A13.65 million loan referred to in the Panel Report, para. 6.50, is repaid by the loan recipient and that the interest rates and repayment terms are no

more beneficial to the recipient than the original terms. The GOA shall notify the USG of repayment of the loan within 30 days of its receipt.

2 Commitment on Future Subsidies:

2.1 ACIS and TCF (SIP)

2.1.1 The GOA shall exclude all hides or leather used in, or intended for use in, motor vehicles from eligibility for assistance under the ACIS (Automotive Competitiveness and Investment Scheme) and the TCF (SIP) scheme (Textiles, Clothing and Footwear Strategic Investment Program Scheme 1999), scheduled to go into effect in January 1, 2001 and July 1, 2000, respectively.

2.1.2 The exclusions in the previous paragraph shall be concluded within 90 days of the date of signature of this Understanding, with effect as of January 1, 2001, for ACIS, and as of July 1, 2000, for TCF (SIP). The GOA shall provide official documentation and notice of the exclusions to the USG within 120 days of the date of signature of this Understanding.

2.2 Successor, Replacement or Supplemental Programs to ACIS and TCF (SIP)

2.2.1 Recognizing that ACIS and the TCF (SIP) scheme programs are scheduled to be effective for a period of five years to December 31, 2005 and June 30, 2005 respectively, the GOA will ensure that all hides or leather used in, or intended for use in, motor vehicles will not be eligible for benefits from any programs or schemes that may succeed, replace, or supplement the ACIS or TCF (SIP) programs ("successor programs"). The inclusion of hides or leather used in, or intended for use in, motor vehicles in any successor programs will constitute a breach of this Understanding subject to dispute resolution under Section 4.

2.3 Other Subsidy Benefits

2.3.1 The GOA shall not directly or indirectly provide or make available any subsidy, as defined in Article 1 of the Agreement on Subsidies and Countervailing Measures ("SCM"), that is specific, as defined in Article 2 SCM, ("specific subsidies") that is related to or benefits the manufacture, sale, or distribution of automotive leather.

2.3.2 The prohibitions of the previous paragraph apply, among other cases, to specific subsidies provided directly or indirectly to

- (1) Howe, Rosedale Leather Pty Ltd, or any related facility in which Howe has an interest and which is engaged in the production and sale of leather or hides used in, or intended for use in, motor vehicles
- (2) ALH and its subsidiaries, or any of their successors in interest. This does not preclude ALH and its subsidiaries, but not Howe, Rosedale Leather

Pty Ltd, or any related facility in which Howe has an interest and which is engaged in the production and sale of leather or hides used in, or intended for use in, motor vehicles, from receiving subsidies under industry wide schemes tied to products other than automotive leather such as furniture leather. The provision of such subsidies, however, shall be accompanied by a notification by the GOA to the recipient that such subsidies are not to be used to benefit the production or sale of leather or hides used in, or intended for use in, motor vehicles.

- (3) "related entities" as defined below on terms that do not prohibit the direct or indirect transfer of the subsidy to ALH or its subsidiaries that would have the effect of undermining this Understanding, including transfers to Howe, Rosedale Leather Pty Ltd, or any related facility in which Howe has an interest and which is engaged in the production and sale of leather or hides used in, or intended for use in, motor vehicles.

- 2.3.3 "Related entities" are: any entity or entities that together directly or indirectly own, control, or hold with power to vote, 5 percent or more of the outstanding voting stock or shares of ALH or its successors. For the purposes of this Understanding, "related entities" currently include, but are not limited to, Schaffer Corporation Ltd, Perpetual Trustees Australia Ltd, NRMA and the South Australian Superannuation Fund Investment Trust.
- 2.3.4 The GOA shall notify the USG of any decision by the GOA to provide or make available, either from the GOA directly or pursuant to a GOA program, any funds or other assistance to: a manufacturer, seller or distributor of hides or leather used in, or intended for use in, motor vehicles, ALH and its subsidiaries, Schaffer Corporation Ltd and its subsidiaries, or directly to Perpetual Trustees Australia Ltd, NRMA or the South Australian Superannuation Fund Investment Trust. This does not include assistance under generally available programs. This notice shall be provided to the USG no later than 30 days before the funds or other assistance is provided, in order to permit consultations with the USG concerning whether the provision of such funds or other assistance would constitute a breach of this Understanding. If the Parties disagree as to whether such funds or assistance would constitute a breach, the matter may be referred to arbitration under the dispute resolution provisions of section 4.
- 2.3.5 The obligations of this section 2 ("Commitments on Future Subsidies") shall remain in effect from the date of signature of this Understanding until receipt of the final notice and proof of payment under paragraph 1.3, or March 3, 2012, whichever is later.
- 2.3.6 For purposes of this section 2, references to specific entities include any successors in interest to those entities, and "subsidiaries" include any entities in which the parent entity has a beneficial interest.

3 **Tariff Reductions**

The GOA agrees that, effective from July 1, 2000 to February 1, 2012, it will eliminate import tariffs on the products set forth in Annex A.

4 **Dispute Resolution**

- 4.1 This Understanding shall be subject to binding arbitration, as follows.
- 4.2 Either Party may request consultations in writing with the other Party regarding any matter arising under this Understanding, including whether there has been a breach of this Understanding or whether any breach has been cured. Consultations shall commence within 15 days following delivery of the request.
- 4.3 The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations. To this end, the Parties shall provide information to enable a full examination of the issue. This information may be requested in the request for consultations, and shall be provided at the commencement of consultations.
- 4.4 If, within 30 days following the delivery of a request for consultations, the Parties fail to resolve the matter, either Party may initiate arbitration proceedings by serving written notice of the arbitration on the other Party. To avoid delay, the arbitration shall be carried out by the original panel in the WTO dispute, if the members are available.¹ The Parties shall share the cost of any arbitration.
- 4.5 Such arbitration shall address the matters submitted to it by the Parties, including (1) whether there has been a breach of this Understanding or whether any such breach has been cured, and (2) the appropriate level of countermeasures in light of the nature of any breach and the nullification or impairment of benefits under this Understanding. In no

¹ If any or all of the original panelists are not available, the parties will agree to an alternative panel within 25 days of receipt of the notice of arbitration, as follows: (1) If one original panelist is not available, the remaining two panelists will select a third panelist to be the Chair. If the two panelists cannot agree on a Chair, the Chair will be chosen by lot from the two persons proposed by each panelist. (2) If two original panelists are not available, the available original panelist shall serve as the Chair, and the Parties shall each select one person to serve on the panel. In the event that a Party does not select a panelist within 10 days of initiation, the other party may select that panelist. (3) If none of the original panelists is available, each party shall select one person to serve on the panel within 10 days of initiation. In the event that a Party does not select a panelist within 10 days, the other Party may select that panelist. The Chair of the panel shall be selected by the panelists within 10 days of their selection. If the panelists cannot agree on a Chair, the Chair shall be selected by lot from the two persons proposed by each panelist. Panelists may not be citizens of the United States of America or Australia, and shall have a demonstrable expertise in subsidies and the SCM Agreement.

event, however, shall the countermeasures be less than the amount of total benefit conferred directly or indirectly on the manufacture of automotive leather for use in motor vehicles by virtue of any subsidy provided in breach of this Understanding, and, in the event of a failure to repay under section 1, three (3) times the total repayments remaining unpaid. Countermeasures shall be determined without regard to the tariff reductions in section 3 of this Understanding.

- 4.6 Such arbitration shall be completed within 90 days of initiation and shall result in a written decision.
- 4.7 The USG may take immediate action to take any countermeasures approved by the arbitration panel in its written decision, and Australia agrees not to contest, in the WTO or elsewhere, any such countermeasures. If the breach is cured, as agreed through consultations or, failing this, as determined through the arbitration procedures above, the countermeasures shall be withdrawn.
- 4.8 There shall be no further arbitration or appeal of the decision of the arbitration panel.

5 General Provisions

- 5.1 Except as provided in paragraph 4.7, this Understanding is without prejudice to the rights of either Party to invoke its rights under the DSU, the SCM, or other agreements, with respect to any government program or measure of the other Party. This paragraph does not apply to the grant referred to in paragraph 1.1 of this Understanding, as the Parties agree that this Understanding represents a mutually satisfactory solution to the issues presented in the Panel Report in *Australia – Subsidies Provided to Producers and Exporters of Automotive Leather* (WT/DS126), Recourse to Article 21.5 of the DSU by the United States, January 21, 2000, *adopted* February 11, 2000.
- 5.2 Any notices provided or requests made under this Understanding shall be delivered, in writing, by facsimile, hand-delivery or mail, to the following addresses:

For the United States:

United States Trade Representative
Office of General Counsel
600 17th Street, N.W.
Washington, D.C.
20508
Attention: Australia – Automotive Leather Dispute

For the Government of Australia:

Assistant Secretary
World Trade Organization Branch
Trade Negotiations Division
Department of Foreign Affairs and Trade
R.G. Casey Building
John McEwen Crescent
Barton ACT 0221
Attention: Australia – Automotive Leather Dispute

6 Entry Into Force

This Understanding shall come into effect on the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorized for this purpose by their respective governments, have signed this Understanding.

SIGNED in duplicate at Washington, this 20th day of June, 2000.



**FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA**



**FOR THE GOVERNMENT OF
AUSTRALIA**

**Automotive Leather Subsidies
Understanding between the
Government of the United States of America
and the
Government of Australia**

Temporary Reductions in Tariff Rates

HS Code	Brief Description
2905.12.00	Saturated monohydric alcohols: - propan-1-ol (propyl alcohol) and propan-2-ol (isopropyl alcohol)
2915.60.00	Butyric acids, valeric acids, their salts and esters
4011.30.00	New pneumatic tyres, of rubber: - of a kind used on aircraft
4014.10.00	Hygienic or pharmaceutical articles of vulcanised rubber other than hard rubber - sheath contraceptives
7013.10.00	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of 7010 or 7018) - of glass-ceramics
8211.93.00	Knives with cutting blades, serrated or not (including pruning knives), other than knives of 8208, and blades therefor: - knives having other than fixed blades
8407.21.00	Spark-ignition reciprocating or rotary internal combustion piston engines: - marine propulsion engines: -- outboard motors
8419.60.00	Machinery for liquefying air or other gases
8475.21.00	Machines for manufacturing or hotworking glass or glassware - machines for making optical fibres and preforms thereof

8506.10.00	Primary cells and primary batteries - manganese dioxide
8506.40.00	Primary cells and primary batteries - silver oxide
8506.50.00	Primary cells and primary batteries - lithium
8509.30.00	Electro-mechanical domestic appliances, with self-contained electric motor - kitchen waste disposers
8509.40.00	Electro-mechanical domestic appliances, with self-contained electric motor - food grinders and mixers; fruit or vegetable juice extractors
8509.80.00	Electro-mechanical domestic appliances, with self-contained electric motor - other appliances
8510.20.00	Shavers, hair clippers and hair-removing appliances, with self-contained electric motors - hair clippers
8516.50.00	Microwave ovens
8520.32.90	Other magnetic tape recorders incorporating sound reproducing apparatus - digital audio type, other than dictating machines -- other
8528.21.00	Video monitors - colour
8528.30.00	Video projectors
8539.21.00	Other filament lamps, excluding ultra-violet or infra-red lamps - tungsten halogen

9008.40.00	Photographic (other than cinematographic) enlargers and reducers
9010.10.00	Apparatus and equipment for automatically developing photographic (including cinematographic) film or paper in rolls or for automatically exposing developed film to rolls of photographic paper
9010.50.10	Other apparatus and equipment for photographic (including cinematographic) laboratories; negatoscopes - layout tables, photographic silver recovery apparatus; vacuum framers
9010.50.20	Other apparatus and equipment for photographic (including cinematographic) laboratories; negatoscopes - apparatus and equipment for the processing of sensitised film or paper, not including goods of 9010.50.10
9503.10.00	Electric trains, including tracks, signals and other accessories thereof
9503.20.00	Reduced-size ("scale") model assembly kits, whether or not working models, excluding those of 9503.10.00
9503.80.00	Other toys and models, incorporating a motor
9506.11.00	Snow-skis and other snow-ski equipment - Skis
9617.00.00	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners